A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

Writ Petition No. 3839 of 2006

PETITIONERS

1. Mukesh Kumar Goswami
Aged about 42 years
S/o. Shri Ummed Giri Goswami
Assistant – Teacher
Girls Secondary School Koudilasa
(Tribal Welfare Department)
District Rajnandgaon (C.G.)

2. Pramod Kumar Parakh
Aged about 40 years
S/o. Shri Kanwar Lal Parakh
Assistant – Teacher
Govt. Primary School Bandha
Bazar (Tribal Welfare Department)
District Rajnandgaon (C.G.)

3. Shrikant Choudhary
Aged about 43 years
S/o. Late Shri Kanhaiyya Lal Choudhary, Assistant Teacher Govt. Primary School, Village – Pangari
(Tribal Welfare Department)
District Rajnandgaon (C.G.)

4. Gaindlal Sahu (G.L. Sahu)
Aged about 41 years
S/o. Shri Kantooram Sahu
Assistant Teacher (Tribal Welfare)
Govt. Girls Secondary School
Village – Koudikasa B.D. Chauki
(Tribal – Welfare Department)
District Rajnandgaon (C.G.)

5. Benzamin – Tigga
Aged about 45 years
S/o. Late Shri Piyus Tigga
Assistant Teacher
Govt. Primary School
(Tribal Welfare), Village Goplin Chuna,
B.D. – Ambagarh Chouki
District Rajnandgaon (C.G.)

6. Ram Sharan Newla
Aged about 55 years
S/o. Shri Sakha Ram Newla

Assistant Teacher
Govt. Primary School
Village – Badsena,
District Rajnandgaon (C.G.)

7. Parmeshwar Das Sahu
Aged about 41 years
S/o. Shri Bishal Ram Sahu
Boys Middle School (Govt.)
Village – Jadutola (Tribal Welfare Department), Distt. – Rajnandgaon (C.G.)

8. Nanhe Lal Suktel
Aged about 41 years
S/o. Shri Toman Lal Suktel
Assistant Teacher
Govt. Boys Primary School
Village – Atargaon, B.D. Chouky,
(Tribal Welfare Department)
District - Rajnandgaon (C.G.)

9. Smt. Geeta Yadav
Aged about 42 years
S/o. Shri M.K. Yadav
Assistant Teacher
Govt. Boys Primary School
Village – Koudikasa (Tribal Welfare Department), District - Rajnandgaon (C.G.)

10. Chout Ram Kunjam
Aged about 47 years
S/o. Shri Niring Sai Kunjam
Assistant – Teacher,
Govt. Middle School
Village – Kakipar, B.D. – Mohla
(Tribal Welfare Department)
District - Rajnandgaon (C.G.)

11. Afzal Khan
Aged about 45 years
S/o. Mr. Akbar Khan
Assistant – Teacher Govt. Girls Middle School, Village – Jadutola, (Tribal Welfare Department)
District - Rajnandgaon (C.G.)

12. Santam Ram Janghel
Aged about 40 years
S/o. Shri F.R. Janghel
Assistant – Teacher
Govt. Boys Middle School
Village – Jadootola

(Tribal Welfare Department)
District - Rajnandgaon (C.G.)

13. Arjun Das Sahu
Aged about 44 years
S/o. Shri Agardas Sahu
Assistant Teacher
Govt. Boys Primary School
Village – Bandha Bazar
(Tribal Welfare Department)
District - Rajnandgaon (C.G.)

14. Kaushal Kumar Vaidya
Aged about 41 years
S/o. Shri Chinta Ram Vaidya
Assistant – Teacher
Govt. Boys Primary School
Village – Parsatola
(Tribal Welfare Department)
District - Rajnandgaon (C.G.)

15. Smt. Madhyama Maheshwari
Aged about 45 years
W/o. Shri P.L. Maheshwari
Assistant – Teacher
Govt. Girls Primary School
Village – Ambagarh Chowky
(Tribal Welfare Department)
District - Rajnandgaon (C.G.)

16. Dhan Singh Kunjam
Aged about 35 years,
S/o. Late Shri Theloo Ram Kunjam
Assistant – Teacher
Govt. Middle School
Village – Urwahi
(Tribal Welfare Department)
District - Rajnandgaon (C.G.)

17. Hinsaram Sinha
Aged about 44 years
S/o. Shri Kailash Ram Sinha
Assistant – Teacher
Govt. Boys Primary School
Village – Bandha Bazar
(Tribal Welfare Department)
District - Rajnandgaon (C.G.)

18. Ravimal – Damle
Aged about 36 years
S/o. Shri Lala Ram Damle
Assistant Teacher
Govt. Middle School, Village – Bharritola, B.D. – Ambagarh Chowky

(Tribal Welfare Department)
District - Rajnandgaon (C.G.)

19. Chetan Dąs Sahu
Aged about 48 years
S/o. Shri Kanshi Ram Sahu
Assistant Teacher
Govt. Boys Primary School
Village – Kaudikasa
(Tribal Welfare Department)
District - Rajnandgaon (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through : Principal Secretary School Education Department
Govt. of Chhattisgarh
Secretariat D.K.S. Bhawan
G.E. Road Raipur (C.G.)

2. Principal Secretary
Scheduled Tribes & Scheduled Caste, Development Department
Govt. of Chhattisgarh
Secretariat – D.K.S. Bhawan
G.E. Road Raipur (C.G.)

3. The Collector
(Scheduled Tribes And Scheduled Castes Development Department Branch Collectorate – Rajnandgaon (C.G.)

Present: Shri V.G. Tamaskar, learned counsel for the petitioner.
Shri Yashwant Singh, learned G.A. for the State.

ORAL ORDER
(Passed on 27th July, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ .

This writ petition is filed by as many as 19 persons who are said to be Assistant Teachers serving in Government Schools. In this writ petition, they have sought for mandamus to declare the Transfer Rationalization Policy, marked as Annexure P/2 as *ultra vires* the

Constitution. Furthermore, the petitioners have sought for quashing of the transfer order, marked as Annexure P/3, dated 06-07-2006 whereunder the petitioners have been transferred from the present places of service to various places where there are shortages for teachers or vacancies exist. A copy of the impugned policy is annexed to the writ petition as Annexure P/2 at Page 72 to 82 of the material papers.

2. While attacking the validity of the impugned policy, Shri V.G. Tamaskar, learned counsel for the petitioners would contend that the direction in the policy to conduct counselling to ascertain the willingness / preferences of the teachers is arbitrary and unreasonable. He would submit that the provision to conduct counselling has created a fertile grazing ground to unscrupulous and corrupt officials in the Education Department to feed on innocent teachers and harass them. He would also submit that there is full scope for the Transferring Authorities to misuse and abuse the power conferred on them under the policy. Shri V.G. Tamaskar would next contend that the provision in the impugned policy that only the relatively junior teachers should be transferred is also totally arbitrary, unreasonable, discriminatory and violative of Article 14 of the Constitution. These are the only two grounds urged by the learned counsel for the petitioners while assailing the validity of the impugned policy.

3. The power of review under Article 226 of the Constitution to review a policy decision of the State is very much circumscribed and limited by a catena of decisions of the Apex Court and the High Courts. The wisdom behind the policy decision of the State which is evolved to achieve certain goals which are not obnoxious to the Constitution or law cannot lightly be interfered with by the reviewing Court. As the Courts repeatedly held,

the Courts will not normally interfere with the policy decisions of the Government and Government authorities; the Courts must exercise power of judicial review with circumspection. The wisdom in a policy decision of the Government or statutory authorities, as such, is not justiciable unless such policy decision is capricious, arbitrary, whimsical so as to offend Article 14 of the Constitution or any statutory or constitutional provision. The only thing to be seen by the Court when a policy decision is assailed is whether the policy in question is arbitrary or violative of any mandatory provisions of law. In **Tata iron and Steel Co., Ltd. v. Union of India** [1], it was held that unless policy decision is inconsistent with the Constitution or any law, Court must exercise jurisdiction with circumspection, particularly, when the issues are intertwined with policy decision and technical issues. In **Sitaram Co. v. Union of India** [2], the Apex Court held that the Court does not possess the expertise required to determine the matter; and the determination has been made by experts appointed by the Government. In **Sher Singh v. Union of India** [3], the Court opined that there shall be no judicial review if the policy decision is neither unfair nor *mala fide.* In **A.M.S.A. Karmachari Santh v. State** [4], the Court has opined that a policy decision shall not be normally questioned in a Court of law and the Court cannot find fault with discrimination based on policy.

4. Nevertheless, it is settled position that even a policy decision is liable to be struck down by the Court under Article 226 of the Constitution if the Court finds that the impugned policy decision of the State is totally arbitrary, unreasonable, discriminatory or violative of any of the provisions of the Constitution or that of any public law statute.

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1. (1996) 9 SCC – 709 ; 2. AIR 1990 SC 1277
3. (1995) 6 SCC – 515 ; 4. (1996) 9 SCC - 186

5. Keeping in mind the above noted well-settled principles and parameters of judicial review, let us proceed to consider the points urged by Shri V.G. Tamaskar, learned counsel for the petitioners. We are at a loss to understand how the impugned policy insofar as it provides for conducting counselling in order to know the preferences of the teachers who are likely or liable to be transferred to different places where vacancies or shortage for teachers exist would be condemned as arbitrary, unreasonable or discriminatory. On the other hand, it is our considered opinion that the said provision is very much in consonance with the role of the modern State which has changed from patriarchal role to matriarchal role. That is why modern States are called welfare States. If the Government think that before transferring teachers from the present places of working to other places it would be appropriate to know the choice of such teachers and accordingly it makes a provision to conduct counselling to know the teachers' preferences, such a healthy measure provided by the State in the policy decision could not be condemned as arbitrary or unreasonable. Therefore, that part of the argument of the learned counsel for the petitioners is meritless and liable to be rejected in *limine.*

6. The second contention with regard to the provision in the impugned policy to retain the senior teachers at the present places and transferring the relatively junior teachers to other places where there is shortage for teachers or where vacancies exist is also devoid of merit. What Article 14 of the Constitution prohibits is class legislation and not reasonable classification. If the State takes care to reasonably classify the persons for treatment and if it deals equally with all persons belonging to a *'well defined class'*, it is not open to the charge of denial of equal protection on

the ground that the law does not apply to other persons. The classification of teachers into senior teachers and junior teachers for the purpose of transfer is founded on intelligible differentia which distinguishes the persons that are put together from that of others left out of the group. Be that as it may, as already stated *supra,* it is not for the Court to question the wisdom of the policy decision of the State unless it is shown that the policy decision of the State suffers from vice of invidious discrimination or arbitrariness and is otherwise violative of any of the provisions of the Constitution or public law statutes. The Government having regard to the age and convenience of the teachers has allowed the senior teachers and the teachers who have only short time to retire from service to continue in the present places keeping in mind their welfare and comfort and decided to transfer relatively younger generation of the teachers who are capable of shouldering hardship and inconveniencies arising out of their transfers, to serve in different places. The classification of the teachers into seniors and juniors made by the State for the purpose of transfer is undeniably founded on a rational consideration and is intended to achieve a social objective, and therefore, such a provision cannot be condemned as arbitrary or discriminatory. Thus, the second contention raised by learned counsel for the petitioners also fails.

7. In the result and for the foregoing reasons, we dismiss the writ petition, however, with no order as to costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmuk
Judge

Subbu